

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

SHIRL KEAHEY,

Case No.: 3:21-cv-00396-MMD -WGC

Plaintiff

Report & Recommendation of United States Magistrate Judge

V.

Re: ECF Nos. 1, 1-1

MOHAMAD RUIES,

Defendant

This Report and Recommendation is made to the Honorable Miranda M. Du, United District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4.

Plaintiff has filed an application to proceed in forma pauperis (IFP) (ECF No. 1) and pro se complaint (ECF No. 1-1).

After a thorough review, it is recommended that the IFP application be granted, and that the complaint be dismissed with prejudice.

I. IFP APPLICATION

A person may be granted permission to proceed IFP if the person “submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant’s belief that the person is entitled to redress.” 28 U.S.C. § 1915(a)(1); *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (stating that 28 U.S.C. § 1915 applies to all actions filed IFP, not just prisoner actions).

In addition, the Local Rules of Practice for the District of Nevada provide: "Any person who is unable to prepay the fees in a civil case may apply to the court for authority to proceed

1 [IFP]. The application must be made on the form provided by the court and must include a
 2 financial affidavit disclosing the applicant's income, assets, expenses, and liabilities." LSR 1-1.

3 "[T]he supporting affidavits [must] state the facts as to [the] affiant's poverty with some
 4 particularity, definiteness and certainty." *U.S. v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981)
 5 (quotation marks and citation omitted). A litigant need not "be absolutely destitute to enjoy the
 6 benefits of the statute." *Adkins v. E.I. Du Pont de Nemours & Co.*, 335 U.S. 331, 339 (1948).

7 A review of the application to proceed IFP reveals Plaintiff cannot pay the filing fee;
 8 therefore, the application should be granted.

9 **II. SCREENING**

10 **A. Standard**

11 "[T]he court shall dismiss the case at any time if the court determines that-- (A) the
 12 allegation of poverty is untrue; or (B) the action or appeal-- (i) is frivolous or malicious; (ii) fails
 13 to state a claim upon which relief may be granted; or (iii) seeks monetary relief against a
 14 defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(A), (B)(i)-(iii).

15 Dismissal of a complaint for failure to state a claim upon which relief may be granted is
 16 provided for in Federal Rule of Civil Procedure 12(b)(6), and 28 U.S.C. § 1915(e)(2)(B)(ii)
 17 tracks that language. As such, when reviewing the adequacy of a complaint under this statute, the
 18 court applies the same standard as is applied under Rule 12(b)(6). *See e.g. Watison v. Carter*, 668
 19 F.3d 1108, 1112 (9th Cir. 2012) ("The standard for determining whether a plaintiff has failed to
 20 state a claim upon which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the
 21 Federal Rule of Civil Procedure 12(b)(6) standard for failure to state a claim."). Review under
 22 Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of America*,
 23 232 F.3d 719, 723 (9th Cir. 2000) (citation omitted).

1 The court must accept as true the allegations, construe the pleadings in the light most
 2 favorable to the plaintiff, and resolve all doubts in the plaintiff's favor. *Jenkins v. McKeithen*,
 3 395 U.S. 411, 421 (1969) (citations omitted). Allegations in pro se complaints are "held to less
 4 stringent standards than formal pleadings drafted by lawyers[.]" *Hughes v. Rowe*, 449 U.S. 5, 9
 5 (1980) (internal quotation marks and citation omitted).

6 A complaint must contain more than a "formulaic recitation of the elements of a cause of
 7 action," it must contain factual allegations sufficient to "raise a right to relief above the
 8 speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "The pleading
 9 must contain something more ... than ... a statement of facts that merely creates a suspicion [of]
 10 a legally cognizable right of action." *Id.* (citation and quotation marks omitted). At a minimum, a
 11 plaintiff should include "enough facts to state a claim to relief that is plausible on its face." *Id.* at
 12 570; *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

13 A dismissal should not be without leave to amend unless it is clear from the face of the
 14 complaint that the action is frivolous and could not be amended to state a federal claim, or the
 15 district court lacks subject matter jurisdiction over the action. *See Cato v. United States*, 70 F.3d
 16 1103, 1106 (9th Cir. 1995); *O'Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990).

17 **B. Plaintiff's Complaint**

18 Plaintiff's complaint names only Mohamad Ruise, whom Plaintiff alleges resides in
 19 Reno, Nevada. The statement of claim consists of the following: "Told him to shut up week later
 20 was eviction papers."

21 While Rule 8 requires a "short and plain statement of the claim showing that the pleader
 22 is entitled to relief," the plaintiff must include *factual allegations* showing the plaintiff is entitled
 23 to relief. Fed. R. Civ. P. 8(a)(2). Plaintiff's complaint is devoid of sufficient factual allegations to

1 show she states a colorable claim for relief. Rule 8 also requires the plaintiff include a statement
2 of the grounds for the court's jurisdiction, which Plaintiff has failed to do. Plaintiff lists her
3 address in Reno, Nevada, so it does not appear there is diversity jurisdiction. Nor does there
4 appear to be a basis for federal jurisdiction when the essence of the claim seems to be an
5 improper eviction.

6 It does not appear that the complaint could be amended to state a claim; therefore, this
7 action should be dismissed with prejudice.

8 **III. RECOMMENDATION**

9 IT IS HEREBY RECOMMENDED that the District Judge enter an order:

10 (1) **GRANTING** Plaintiff's IFP application (ECF No. 1). Plaintiff is permitted to
11 maintain this action without prepaying the filing fee or giving security therefor. This
12 order granting IFP status does not extend to the issuance of subpoenas at government
13 expense.

14 (2) The complaint (ECF No. 1-1) should be **FILED**.

15 (3) The action should be **DISMISSED WITH PREJUDICE** for failing to state a claim
16 upon which relief may be granted.

17 The Plaintiff should be aware of the following:

18 1. That she may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to
19 this Report and Recommendation within fourteen days of being served with a copy of the Report
20 and Recommendation. These objections should be titled "Objections to Magistrate Judge's
21 Report and Recommendation" and should be accompanied by points and authorities for
22 consideration by the district judge.

1 2. That this Report and Recommendation is not an appealable order and that any notice of
2 appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed
3 until entry of judgment by the district court.

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5 Dated: January 4, 2022

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7 William G. Cobb
8 United States Magistrate Judge

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